IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 777 of 2005

Between:

M/S.Laxmi wines, Dharpally, Dharpally village & Mandal,

Rep.by its proprietor Sri G.V.Ramana Reddy, S/o.Ganga Reddy, age 28 years.

... PETITIONER

AND

1. The Prohibition & Excise Superintendent,

Nizamabad, at Nizamabad.

2. The Mandal Revenue Officer, Dharpally,

Dharpally Mandal, Nizamabad District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the proceedings No.B2/284/2004, dated 19.01.2005, as arbitrary, illegal, without jurisdiction and violative of Article 14 of the Constitution of India.

COUNSEL FOR THE PETITIONER: MR.V.TULASI REDDY.

COUNSEL FOR THE RESPONDENTS: GOVT.PLEADER FOR PROHIBITION & EXCISE.

The Court at the admission stage made the following :

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O R D E R:

The petitioner is an IL-24 licensee and established his shop at Dharpally village of Nizamabad District. Initially, the licence was granted for the year 2002-2003, and thereafter, it was renewed from time to time. The licence fee for shops in the villages, with the population of less than 10,000, is Rs.3,00,000/-, and for those in the villages, where the population is more than 10,000, is Rs.4,50,000/-. The census figures of 2001 constitute the basis for determination of the licence fee.

The petitioner paid Rs.3,00,000/- each, for the years 2002-2003 and 2003-2004. Subsequently, the first respondent demanded the differential amount of Rs.1,50,000/- per year, for the said two years, on the ground that the population of Dharpally village is more than 10,000. Aggrieved thereby, the petitioner filed W.P.No.9088 of 2004. No relief was granted therein. Hence, he filed Writ Appeal No.2178 of 2004. The writ appeal was disposed of, through order dated 31.12.2004, directing that it shall be open to the petitioner to place such material, as is in his possession, in support of the contention that the population of the village is less than 10,000, and in such an event, the first respondent shall pass a reasoned order. It is in this context that the first respondent passed order dated 19.01.2005, taking the view that the population of the village is 10072, and thereby the petitioner is liable to pay the differential amount of Rs.3,00,000/- for the two excise years. Petitioner challenges the same.

Heard learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

The issue revolves around one fact, namely the population of the village concerned. Petitioner placed reliance upon the particulars furnished by the Mandal

Revenue Officer, the second respondent. According to the particulars furnished by the second respondent, the population of the village Dharpally proper is 8,243 and that of a hamlet Sithaipet is 1,700. If these two added, it comes to 9,943. However, the first respondent had obtained the statistics directly from the census office and took the view that the population is 10,072. Being a pure question of fact, that too born out by record, the same cannot be adjudicated by this Court. Further, while disposing of the Writ Appeal No.2178 of 2004, the Division Bench observed that the petitioner should not raise any objection for the finding that may be recorded by the first respondent.

Learned counsel for the petitioner submits that his client had already paid a sum of Rs.1,91,500/- and in view of the recent espouse of extremists violence in the area, the petitioner finds it difficult even to run the shop. He seeks reasonable time for payment of the same. He also objects to the levy of penal interest of Rs.41,500/-.

The very fact that there existed variance, the statistics furnished by the Census Department on the one hand and the one furnished by the second respondent on the other hand discloses that it is not a case where the petitioner purposefully avoided to pay the differential licence fee. He was under the bonafide impression that the population is less than 10,000, and to a considerable extent, the officers of the Excise Department also entertained the same view. It cannot be said that the petitioner omitted to pay the differential amount deliberately. Taking the totality of the circumstances into account, this Court is of the view that the petitioner cannot be mulcted with the liability to pay the penal interest.

Hence, the writ petition is disposed of, directing that the petitioner shall be entitled to pay the balance of amount, namely, Rs.1,08,500/- by 15.03.2005. In default, it shall be open to the first respondent to take necessary action, as contemplated in law. The respondents shall forthwith direct removal of seal said to have been put on the shop of the petitioner. There shall be no order as to costs.

25th January, 2005

Note: Issue copy by tomorrow.

(B/o)

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To

1. The Prohibition & Excise Superintendent,

Nizamabad, at Nizamabad.

2. The Mandal Revenue Officer, Dharpally,

Dharpally Mandal, Nizamabad District.

3. Two C.Cs. to the Government Pleader for Prohibition & Excise,

High Court buildings, Hyderabad (OUT)

4. Two C.D.copies